

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

COMM 2006-C8 COVESIDE
LANE, LLC

Plaintiff,

v.

EZRA BEYMAN,

Defendant

Civil Action No.: 2:12-cv-373

AMENDED COMPLAINT

COMES NOW your plaintiff, COMM 2006-C8 Covese Lane, LLC, by counsel,
and for its Amended Complaint in this matter states as follows:

Summary of Claims

This is an action by Plaintiff to recover its damages for breaches of a loan transaction evidenced by, among other things, the Amended and Restated Promissory Note signed by Empirian Chesapeake LLC (“Empirian Chesapeake”) and a Personal Guaranty signed by Defendant Ezra Beyman (“Beyman”).

The Parties

1. Plaintiff COMM 2006-C8 Covese Lane, LLC is a limited liability company whose sole member is Wells Fargo Bank, National Association, as Trustee for the Registered Holders of COMM 2006-C8 Commercial Mortgage Pass-Through Certificates. Plaintiff’s sole member’s main office is located in Sioux Falls, South Dakota, and Plaintiff is therefore a citizen of South Dakota.

2. Defendant Ezra Beyman is a citizen of the State of New York, residing at 16 Sylvan Road, Monsey, New York.

Jurisdiction and Venue

3. Diversity jurisdiction exists pursuant to 28 U.S.C. § 1332 because the Plaintiff is a citizen of a state different from the Defendant and because the value of the matter in controversy exceeds \$75,000.00.

4. Venue in this district is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events on which the claim is based occurred in the Eastern District of Virginia.

Background Facts

5. Plaintiff is the holder of a certain Amended and Restated Promissory Note in the face amount of \$63,000,000.00, made by Empirian Chesapeake, LLC to the order of Arbor Commercial Mortgage, LLC, a New York limited liability company, and its successors and assigns (the “Promissory Note”). A true and correct copy of the Promissory Note is attached hereto as Exhibit A.

6. As part of the loan transaction, Empirian Chesapeake entered into an Amended and Restated Deed of Trust (the “Deed of Trust”) on or about December 5, 2006, relating to certain property located at 150 Coveside Lane, Chesapeake, Virginia (the “Property”). A true and correct copy of the Deed of Trust is attached hereto as Exhibit B.

7. The Promissory Note is the subject of a certain guaranty and indemnity made as of December 5, 2006, by Defendant Ezra Beyman (the “Personal Guaranty”). A true and correct copy of the Personal Guaranty is attached hereto as Exhibit C.

8. Pursuant to the Recourse Provision, as defined by and contained in Section 1(g) of the Personal Guaranty, Beyman unconditionally and irrevocably guaranteed up to \$13,500,000.00 of the principal balance of the loan until certain conditions were met. *Id.*

9. The Promissory Note, Deed of Trust and Personal Guaranty were endorsed by the original lender to the order of Deutsche Bank Mortgage Capital, LLC, by Deutsche Bank Mortgage Capital, LLC to the order of LaSalle Bank, N.A., as trustee for the registered holders of COMM 2006-C8 Commercial Mortgage Pass-Through Certificates and by LaSalle Bank, N.A. as Trustee, to the order of Wells Fargo Bank, N.A., as Trustee for the Registered Holders of COMM 2006-C8 Commercial Mortgage Pass-Through Certificates, and by Wells Fargo Bank, N.A., as Trustee to the order of COMM 2006-C8 Coveside Lane, LLC, plaintiff in this action. True and correct copies of the allonges endorsing the Promissory Note to Plaintiff are attached hereto as Exhibit D.

10. The conditions set forth in the Recourse Provision of the Personal Guaranty were not satisfied, as required by the terms of the Promissory Note and the Personal Guaranty. Specifically, Empirian Chesapeake failed to make its monthly payments pursuant to the Promissory Note, constituting a continuing Event of Default. Moreover, at no point from December 5, 2006 to the present has the debt service coverage ratio, as defined by the Recourse Provision of the Guaranty, been at least 1.25 to 1.00.

11. By letter dated January 21, 2011 (“Guarantor’s Default Notice”), Plaintiff notified Beyman that a default under the Personal Guaranty had occurred, and demanded payment thereunder. A true and correct copy of the Guarantor’s Default Notice is attached

hereto as Exhibit E. In the Guarantor's Default Notice, Plaintiff demanded payment, by January 30, 2011, in the amount of \$13,500,000.00.

12. The Property was sold at a foreclosure sale on April 11, 2011. Plaintiff was the highest and last bidder, and purchased the Property for fair market value, in the amount of \$52,700,000.00.

13. As of the foreclosure sale date of April 11, 2011, the outstanding debt of the Loan as evidenced by the Note was \$81,591,357.65, consisting of interest in the amount of \$7,492,555.00, payment premiums of \$11,098,011.93, and administrative expenses and master services fees of \$790.72. Empirian Chesapeake was credited an amount of \$188,699.40 in suspense funds credits.

14. Following the foreclosure sale of the Property, a deficiency amount of \$28,804,097.65 remained on the principal balance of the Promissory Note.

15. Despite demand having been made, Beyman failed and refused to make full and complete payment of all sums owed under the Personal Guaranty.

16. Upon completion of the foreclosure sale, Plaintiff did not assign the Promissory Note or Personal Guaranty to any third parties, and remains in physical possession of the original Promissory Note.

Count I

(Breach of Personal Guaranty - Beyman)

17. The allegations of paragraph 1 through 16, inclusive, are incorporated by reference.

18. Pursuant to the terms of the Personal Guaranty, Beyman unconditionally guaranteed the payment of up to \$13,500,000.00 under the Recourse Provision of the Personal Guaranty.

19. The conditions set forth under the Recourse Provision of the Personal Guaranty have not been met, and Empirian Chesapeake has defaulted on its loan obligations, triggering Beyman's payment obligations under the Personal Guaranty.

20. Despite demand, Beyman has failed and refused to make timely payment under the Personal Guaranty.

21. Beyman is liable to Plaintiff for (a) \$13,500,000.00 of the principal balance (b) accrued interest under the Note on such sum from the date of January 30, 2011 until paid, and (c) its attorney's fees and costs.

WHEREFORE, your plaintiff, COMM 2006-C8 Coveside Lane, LLC, prays for judgment against Defendant Ezra Beyman in the amount of \$13,500,000.00, plus all interest due thereon from January 30, 2011, attorneys fees and costs, and such other and further relief as the ends of justice may require.

Respectfully submitted,

COMM 2006-C8 COVESIDE LANE, LLC,

By Counsel

/s/

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Counsel for COMM 2006-C8 Coveside Lane, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August 2012, a true copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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